

Inner City Press

October 31, 2022

By E-mail to Chambers

Hon. J. Paul Oekten, United States District Judge
Southern District of New York, 40 Foley Square, New York, NY 10007

Re: Press opposition to sealing of courtroom in full / complete withholding of exhibit in US v. Costanzo, et al., 22-cr-281 (JPO)

Dear Judge Oetken:

Inner City Press has been covering the above captioned criminal case and now trial. Minutes ago the Court said it was considering sealing the courtroom for direct and cross examination about a Government Exhibit, which the US said it wants sealed in full.

This is near-immediate Press opposition to, and/or request to be heard on, these complete exclusions.

The First Amendment guarantees the public and press a right to attend criminal trials, not only portions of them. In re NBC Universal, Inc., 426 F. Supp. 2d 49 (E.D.N.Y. 2006). The Second Circuit has held that the First Amendment right demands broader disclosure to the public than that required by the common law. See *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 124 (recognizing that the right to access under the First Amendment is "more stringent").

As with redaction of exhibits, which Inner City Press is requesting here, courtroom closures are to be narrowly tailored. Complete exclusion from an entire witness does not meet this test. The AUSA said he was passing up to the Court a sealed motion with caselaw - this should be docketed. Currently there is nothing about this dispute in the docket, into which this letter should be entered. We join in the oral / undocketed request(s) that have been made.

In *United States v. Brooklier*, 685 F.2d 1162, 1169 (9th Cir. 1982), the court rejected the concern that jurors “might be less candid if questioned in public” because “if this general theory of potential prejudice were accepted as sufficient justification for closure without the necessity for finding potential prejudice based upon the circumstances of the particular case, all testimony could be taken in secret.”

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"Representatives of the press must be given an opportunity to be heard on the question of their exclusion from a court proceeding, and we have recognized a similar right of news media to intervene in this Court to seek unsealing of documents filed in a court proceeding." *Trump v. Deutsche Bank AG*, 940 F.2d 146, 150 (2d Cir. 2019).

Please docket this challenge to the proposed closures, as SDNY Judges Hellerstein, Castel, Furman and others have done. See, e.g., <https://storage.courtlistener.com/recap/gov.uscourts.nysd.516151/gov.uscourts.nysd.516151.85.0.pdf>

If appropriate, PLEASE TAKE NOTICE that Inner City Press and its undersigned reporter, in personal capacity, will move this Court before Honorable J. Paul Oetken, U.S. District Judge for the Southern District of New York, at a date and time directed by the Court, for entry of an order granting permission to be heard on sealing or unsealing in *US v. Costanzo, et al.*, 22-cr-281 (JPO)

Please act on, and docket, this request, as soon as possible.

Thank you.

Respectfully submitted,

/s/

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